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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/726,818 | 12/03/2003 | Janis I. Ferrell | 1755.0 | 4111 |
| 22497 | 7590 | 11/17/2004 | EXAMINER | |
| LARSON AND LARSON 11199 69TH STREET NORTH LARGO, FL 33773 | | | SZUMNY, JONATHON A | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3632 | |

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/726,818

Applicant(s)

FERRELL, JANIS I.

Examiner

Jon A Szumny

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-6 is/are pending in the application.
- 4a) Of the above claim(s) 4-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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This is the third office action for application number 10/726,818, Tableware Clip-On Device, filed on December 3, 2003.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

Newly submitted claims 4-6 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

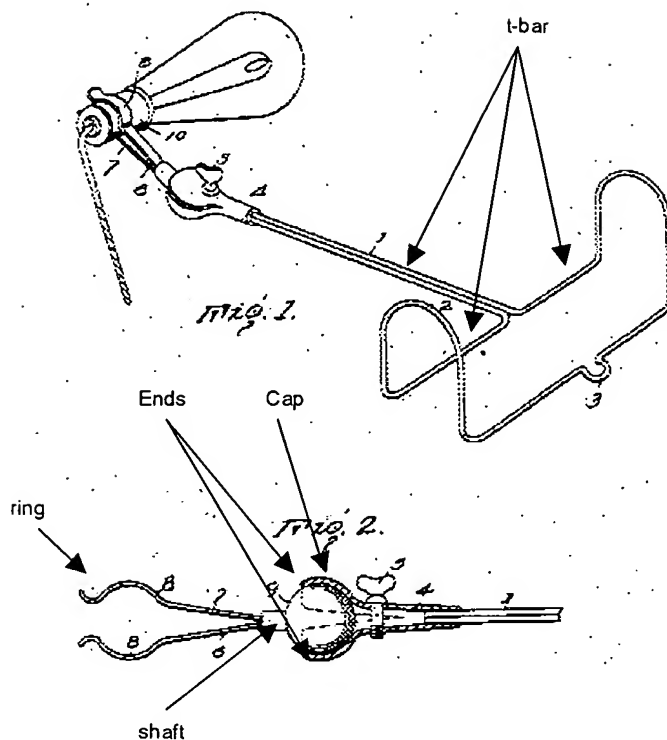
Claims 4-6 now positively recite the combination of a clip-on device and a dinnerware plate, which was never previously claimed.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 4-6 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnes '894 in view of Japanese Patent number 408082318 to Sugiura.

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Barnes '894 discloses a clip on device (above) comprising a ring (above) integral with a shaft (above, utilizing same definition of "integral" from above) extending away from a back end of the ring, the shaft connected to a ball (9) at a point distal from the ring, a partially circular cap (above) supporting a t-bar (above) on an exterior surface distal from an opening between a pair of ends (above) on the circular cap, the t-bar supporting a pair of spreadable lips (above, they are inherently "spreadable" since the wire can be "bent", see lines 42-44), wherein the ring is partially a c-ring, and partially a v-ring. However, Barnes '894 fails to specifically teach the ring to be a c-ring. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the ring of any of numerous shapes, including a c-shaped ring, so long as it still securely fastens to an object, since the particular shape claimed by the applicant is nothing more than one of numerous shapes that an ordinary artisan provides for

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using routine experimentation based on its suitability for the intended use of invention. See In Re Daily, 149 USPQ 47 (CCPA 1976).

Further, Barnes '894 fails to specifically teach the ball to be supported by an axially mounted pin attached to the shaft at the point distal from the C-ring. Nevertheless, Sugiura '318 divulges a shaft (11) connected to a ball (35) wherein the ball is supported by an axially mounted pin (25) attached to the shaft. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Barnes '894 so that the ball is supported by an axially mounted pin attached to the shaft at the point distal from the C-ring so as to provide for superior attachment of the ball to the shaft.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnes '894 in view of Sugiura '318, and further in view of U.S. Patent number 4,796,307 to Vantine.

Barnes '894 in view of Sugiura '318 teaches the previous invention failing to specifically divulge the c-ring, shaft, t-bar and spreadable lips to be made from a molded high strength polymer. Nevertheless, Vantine '307 discloses a clip type member (figure 2) comprised of a molded high strength polymer (column 3, lines 29-33). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the c-ring, shaft, t-bar and spreadable lips of the clip-on device of Barnes '894 in view of Sugiura '318 of a molded high strength polymer as in Vantine '307 since doing so would naturally provide for a low-cost, lightweight and sturdy material, in addition to the fact that doing so is well known in the art of clip-on devices.

Response to Arguments

Applicant's arguments filed October 22, 2004 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, with reference to figure 1 of Sugiura '318, an ordinary artisan would clearly recognize that mounting a ball to a pin with a widened part (25 in Sugiura '318) would provide for a strong and sturdy attachment of the ball to the C-ring via the shaft. The shaft of Barnes '894 appears to be mounted on the outside of the ball, whereas that of Sugiura '318 is mounted via a pin on the inside, hence providing for a more sturdy attachment.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

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Regarding the rejection of claim 3, the applicant contends that there is no suggestion that Vantine's polypropylene would be appropriate for the device in either Barnes or Sugiura. The Examiner disagrees. Clearly, both Barnes '894 (the primary reference) and Vantine '307 concern clips, and it is *well known* among ordinary artisans that comprising clips of plastics such as polypropylene is common due to its durability and low weight, both common goals in the art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (703) 306-3403. The examiner can normally be reached on Monday-Friday 8-4.

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The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is

(703) 308-1113.



Jon Szumny
Patent Examiner
Technology Center 3600
Art Unit 3632
November 9, 2004


ANITA KING
PRIMARY EXAMINER